

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2074 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KISAN SUKAI KAHAR

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA, Advocate for the Petitioner.

MR UR BHATT,AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/07/96

ORAL JUDGEMENT

The petitioner Kishan Sukai Kahar (hereinafter

referred to as "the detenu") has challenged the legality and validity of the order of detention dated 14-2-1996 passed under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the said Act") . The said order has been passed by the Commissioner of Police, Vadodara city (hereinafter referred to as "the detaining authority") .

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on two pending trial, cases being C.R.No.232/94 for offences punishable under sections 323, 504 and 506 (2) of the Indian Penal Code and section 135 of the Bombay Police Act and C.R.No. 281/95 for offences punishable under sections 66B, 65E, 81 and 116(b) of the Bombay Prohibition Act. Over and above these cases, the statements of three witnesses for the incidents alleged to have taken place on 5-1-96, 12-1-96 and 20-1-96 making allegations about the anti-social and naferious activities of the detenu, have also been relied on. Considering these materials placed before it, the detaining authority has recorded a finding that the detenu is a "bootlegger" within the meaning of section 2 (b) and a " dangerous person" within the meaning of section 2 (c) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order , it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in this petition.

This petition is required to be allowed on the first contention raised on behalf of the petitioner by Miss Mishra. Therefore, it is not necessary to refer to and deal with the other contentions raised by her. She contended that the detenu was released on bail in C.R.No. 232/94. However, he has not been supplied with the copy of the bail application alongwith the grounds of detention and, therefore, the detenu has not been able to make an effective representation against his detention. According to her, this has resulted in violation of the fundamental right of the detenu guaranteed under Art. 22 (5) of the Constitution of India and consequently therefore the continued detention of the detenu has become illegal.

Now the law on this point is well settled in view of the decision of the Supreme Court in M.Ahamedkutty vs Union of India and another 1990 (2) SCC p.1. The Supreme Court has ruled that bail application and bail order

constitute vital material and non-consideration thereof by the detaining authority or non-supply of the copies thereof to the detenu would be violative of Article 22 (5) of the Constitution of India resulting in the continued detention of the detenu illegal. It is an undisputed fact that the detenu has not been supplied with the copy of the bail application alongwith the grounds of detention. Under such circumstances, the detenu was not able to make an effective representation against his detention and, therefore, his valuable right guaranteed under Art. 22 (5) of the Constitution of

India has been violated. In view of the above, the continued detention of the detention has become illegal.

In the result, this petition is allowed. The impugned order of detention dated 14-2-96 is quashed and set aside. The detenu Kishan Sukai Kahar is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

o-o-o-o-o-o

True copy